Pellegrino, Rachel

From: Morris, Craig
Sent: Tuesday, January 04, 2011 5:26 PM
To: Brown, Brian (TM)
Subject: FW: Small Business study

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-----Original Message-----
From: Daniel Brendle (b)(6)
Sent: Saturday, December 11, 2010 1:39 PM
To: TMFeedback
Subject: Small Business study

The following are my responses to several of the questions on the USPTO WEB page titled "Request for Comments: Trademark Litigation Tactics"

I have no direct stake in any patent or trademark but I have indirect knowledge of several instances when large corporations have attempted to intimidate competitors. Two that I remember are the litigation brought by the manufacturer of the "Monster" energy drink vs. Rock Art Brewery in Vermont and the lawsuit brought by Scotts Miracle-Gro against TerraCycle.

Responses to questions:

1. N/A.

2. N/A.

3. N/A.

4. N/A.

5. N/A.

6. From my reading of reports of "frivolous" trademark litigation, I believe it is a tactic being used by large corporations to attmept to stifle or limit apparent competition. In the case of Monster Beverage Co. vs. the Rock Art Brewery, I can not see where the use of a common word in the English language (monster) can be co-opted by a corporation such that no other entity may use the word without infringing on a copyright or trademark. In fact, Rock Art Brewery used the name "Vermonster" rather than calling their beverage "Monster." In my opinion, it is entirely frivolous for Monster Beverage Co. to have initiated a complaint based on the similarity between the two beverage names.

I do not know how significant or widespread the problem is, but I believe it is an unfair business practice to bring frivolous litigation in order to drain the monetary resources of a company and to possibly cause the business to close.

7. I have no relevant information regarding the pervasiveness of aggresive trademark litigation vs. other forms of potential legal intimidation.

8. I believe the USPTO could discourage or prevent trademark bullying by being the first stop for disputes over the use or misuse of trademarks. I do not know trademark law but perhaps when a trademark is issued caveats can be attached to the trademark which clarify the

owners limits of reasonable use, e.g. the use of monster in the name "Monster Energy" should not limit the use of the word monster by other parties unless it is used in a context that directly challenges the ownership indicated on the trademark registration. The naming of a beer "Vermonster" does not fit the definition of a challenge or appropriation of the trademarked name "Monster Energy." Similarly, the challenge by Scotts to the use of certain colors on the label used by TerraCycle should have been immediately determined to be illigitimate because the challenge was based on the use of colors on the TerraCycle label that are pervasive in our environment and should not be "trademarkeable."

9. I believe courts have a responsibility to immediately reject frivolous trademark infringement calims, in consultation with the USPTO. An impartial agency (USPTO) could easily issue opinions from experts in trademark law advising courts whether lawsuits could or should continue or be dismissed. If lawsuits are deemed to be frivolous in this manner, the courts should then be compelled to order litigants initiating such lawsuits to award fees and penalties to the "victims" of such lawsuits.

10. (no constructive answer)

11. Congress should give the USPTO the power to bindingly arbitrate trademark disputes. The arbitration should be unbiased toward either party in the dispute and should be based on trademark law.

12. (no other comments)

Thank you for accepting my comments,
Daniel Brendle
(b)(6)